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Chair: Mr. Tommo Monthe ..... (Cameroon)

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The meeting was called to order at 10.15 a.m.

Agenda item 68: Promotion and protection of human rights (*continued*) (A/65/336)

(b) Human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms (*continued*) (A/65/87, A/65/119, A/65/156, A/65/162, A/65/171, A/65/207, A/65/222, A/65/223, A/65/224, A/65/227 and Add.1, A/65/254, A/65/255, A/65/256, A/65/257, A/65/258, A/65/259, A/65/260 and Corr.1, A/65/261, A/65/263, A/65/273, A/65/274, A/65/280 and Corr.1, A/65/281, A/65/282, A/65/284, A/65/285, A/65/287, A/65/288, A/65/310, A/65/321, A/65/322, A/65/340 and A/65/369)

(c) Human rights situations and reports of special rapporteurs and representatives (*continued*) (A/65/331, A/65/364, A/65/367, A/65/368, A/65/370 and A/65/391)

1. **Mr. El Jamri** (Chair, Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families), stressing the importance of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, said that in January 2010, membership of the Committee, which had been established to monitor implementation of the Convention, had increased to 14 following the adherence of a forty-first State.

2. In a world with over 200 million international migrant workers, labour mobility was a key element of development and prosperity; thus, when migrant workers were adequately protected, the economy improved. The Convention was currently the most far-reaching international legal framework and the one that afforded the best protection. It was therefore important that it should be ratified.

3. Many migrant workers, however, continued to be victims of violence, xenophobia, discrimination, exclusion and exploitation. Given that one of the purposes of the Convention was to combat clandestine immigration, it made a distinction between documented and undocumented workers. The hardening of immigration policy in some countries was a matter of concern to his Committee. Under the Convention, States were required to protect the fundamental rights of all migrant workers, including those who were in an irregular situation. In fact, those workers were in even more need of protection, given their greater vulnerability.

4. The Convention was a comprehensive instrument that not only guaranteed the rights of migrant workers but also provided guidance for the design of national immigration policies and international cooperation in regard to regulation. It also helped promote social cohesion.

5. In carrying out its duties, the Committee had reviewed the initial reports of 13 States Parties to the Convention, and had also continued to provide guidance to States, helping them to recognize potential shortcomings for which it had proposed solutions in the form of recommendations. Thus, the reports were especially useful in that they enabled States to assess their situation and take any necessary coordination measures.

6. It was clear from the Committee's review of the reports that changes were needed in order to bring domestic legislation in line with the Convention. Countries needed to gather data for the design of immigration policies and improve the training of officials on human rights in general and the Convention in particular. The Committee had often pointed out that migrant workers, including undocumented ones, should have the right of appeal and that every effort should be made to prevent and combat trafficking in persons. The first general comment of the Committee, which would be adopted in the near future, would deal with an issue it considered very important, namely, domestic workers.

7. He then listed the meetings in which representatives of the Committee had participated during the year, noting that those meetings had dealt with a variety of topics, usually pertaining to human rights.

8. He expressed his support for the Statement on the Human Rights of Migrants in Irregular Situation adopted on 30 September 2010 by the Global Migration Group and stressed that the situation of those migrants was unacceptable; they had the same fundamental rights as all human beings. The question of the human rights of migrant workers was currently being discussed in an increasing number of national and international forums; the importance of the issue was reflected in the recommendations included in the universal periodic review. Forty-three States were

parties to the Convention, but that was still not enough. Moreover, many States had not yet submitted their initial reports, and the Committee planned to address the problem by reviewing the implementation of the Convention in the absence of State reports, as in other treaty bodies.

9. Current preparations being made to celebrate the twentieth anniversary of the Convention on 18 December included a day of reflection. He urged States to ratify the Convention and stressed that the Committee was available to assist them as necessary.

10. **Mr. Yahiaoui** (Algeria), stressing the need for a better understanding of the concept of dialogue and cooperation between States Parties and treaty oversight bodies, said that the sources of allegations and alternative reports should be made available before national reports were submitted. In order for the Committee's recommendations to achieve their corrective purpose, the arguments of Governments should be taken into account.

11. Algeria had met its obligations under the Convention in 2010, in particular by submitting its initial report. The Committee's concluding observations following its review of the report in April 2010 were inaccurate and did not reflect the constructive debate that had taken place and did not take into account the replies his country had provided.

12. The Algerian Government had already responded in an aide-memoire to the Committee Secretariat. His Government had requested that its reply should be annexed to the report of the Committee before the Third Committee took note of it. Reiterating that request, he asked for it to be reflected in the summary record. The members of treaty bodies must demonstrate objectivity and independence in the performance of their duties.

13. **Mr. El Mkhantar** (Morocco) said that the 200 million migrants mentioned would be equivalent to a country with the fifth highest population in the world. Given the geostrategic issues that were at stake, migration was now one of the most important questions facing national and international policymakers.

14. He would like to know if the hardening of immigration policies was likely to undermine the efforts of the international community to better protect migrants. He also asked for some examples of good practices that took into account not only the development needs of countries of origin and the requirements of host countries, but also the needs of migrants.

15. **Ms. Klein Solomon** (International Organization for Migration, IOM)) stressed the need to help States that had chosen to ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families to bring their immigration policies and legislation in line with its provisions. At the national level, all migrants, regardless of their status, should be able to exercise their rights in a framework of laws, procedures and practices that protected human rights. It was up to individual States to determine which aliens should be allowed to enter their territory and to define the terms of their entry.

16. IOM had set up a programme to promote research, analysis and dissemination of international law that had made it possible to compile a collection of instruments on trafficking, crime, fraud and commercial law. It provided Governments with information on how to apply principles pertaining to migration issues in order to make them more aware of their responsibilities and to ensure that they would be more vigilant.

17. IOM was open to comments and suggestions on its future action.

18. **Mr. El Jamri** (Chair, Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families), replying to the representative of Algeria, said that the Committee's consideration of the report of Algeria had highlighted the progress made in regard to the situation of migrants and the implementation of the Convention, but had also mentioned certain areas where improvements were needed. In his view, a positive dialogue with Algeria had been established, and he hoped that it would continue. Stressing the absolute independence of the Committee, he announced that it would take up the aide-memoire from Algeria at its next session, to be held from 22 November to 3 December 2010. Drawing attention to the issue of the growth in South-South migration, he said that further studies and analyses of that phenomenon were needed.

19. In replying to the question of the representative of Morocco on the hardening of immigration policies, he said that as some economic systems had created new categories of more vulnerable migrants, such as

informal workers, seasonal migrants and minors, legal migration had tended to decline. The protection of human rights, which had usually been ensured by associations and trade unions, had been hurt by the policy of "national preference" being implemented by certain countries in the North. It should be noted that some migrants had reacted to that situation by organizing their own social movements. In order to have a positive effect and to better protect migrants, migration policies should be designed for the medium and long terms. Good practices in such areas as education, health and housing were already being applied in some countries or regions. At the suggestion of several international organizations, guidelines had also been developed to assist with the design of immigration policies around the world. Referring to the comments of the representative of IOM, he said that developing knowledge at all levels and strengthening capacities could contribute to the effort to find better solutions to the problems posed by migration. Progressive measures should be implemented, bearing in mind the legal, social and economic dimensions of the question.

20. The "brain drain" was a serious problem as it deprived countries of origin of the skilled and mid-level personnel they needed for their development efforts. In order to remedy that situation, individual countries should draw up migration policies that took into account skill levels, economic needs and possibilities for migration.

21. The agencies concerned should take other measures as well and continue their efforts to develop rights-based mechanisms for protecting migrants at every step in the migration process.

22. **Mr. Bustamante** (Special Rapporteur on the human rights of migrants) said that in 2008, he had warned the Human Rights Council of a growing trend towards the criminalization of irregular migration and abusive treatment of migrants. In particular, he had observed that migration control policies were being externalized and that the rights of migrants in an irregular situation were being violated. That trend had in fact been confirmed, and human rights had not been mainstreamed in migration policies. Arrangements that focused only on security and border controls failed to take the human factor into account, had a negative effect on the protection of migrants' human rights and did not discourage illegal immigration and human trafficking, harming migrants as well as transit and destination countries. Moreover, criminalizing irregular migrants fostered racism and xenophobia towards all migrants.

23. Illegal migration was a complex phenomenon caused by many interrelated factors, such as the tightening of controls on the part of destination countries, the restriction of legal channels for migration, growing unemployment and social exclusion in countries of origin and the increasing demand for informal workers in destination countries. More information was needed on the demand for labour in specific sectors of the economy, including for migrants in an irregular situation; having that type of data would make it possible to promote mobility through legal migration channels, to set up regional offices to deal with migration issues and to develop mechanisms for sharing knowledge and promoting a rights-based approach to migration issues.

24. Although administrative detention should only be used as a measure of last resort, some countries were using it as the main, if not the only, way to manage migration flows. It was often applied without any judicial oversight, in clear contravention of international law and the human rights procedures that were applicable to all migrants regardless of their status.

25. It should also be noted that many countries still authorized the detention of children in unsuitable facilities, owing to their irregular situation or that of their parents. Policies should be adapted to meet the needs of those children, and steps should be taken to facilitate normalization of their situation and guarantee their social rights while preserving family unity.

26. Systematically involving the courts in matters relating to irregular migration prevented many victims from having access to justice and receiving the protection to which they were entitled, making it less likely that human rights violations would be brought to the attention of the competent authorities. Recently adopted measures requiring civil servants, health personnel and teachers, or even regular citizens, to report irregular migrants to the police or to immigration authorities had had an adverse effect. Victims of trafficking, in particular, should receive assistance, regardless of whether or not they cooperated with judicial authorities, and they should not be punished twice.

27. He noted with satisfaction that some measures, activities and policies being implemented by

Governments, intergovernmental organizations, civil society groups and the private sector showed that there was a genuine willingness to protect the human rights of migrants in an irregular situation, and that comprehensive normalization programmes were being implemented in some States. Opportunities for regular migration should be created in order to combat the root causes of clandestine migration and the evils of smuggling, human trafficking and child labour. When human rights were respected, regular and irregular migrants alike would be able to become actively involved in the social and economic development of their countries of origin and destination, as well as of their transit countries.

28. **Mr. Hassan Ali** (Sudan) said that migrations were caused by global economic imbalances and that immigration usually benefited the countries of destination. His delegation was especially concerned about the situation of migrants who suffered xenophobia and discrimination in their host countries. Some of those countries offered opportunities that encouraged the immigration of highly skilled individuals, such as doctors or lawyers, creating a "brain drain" in the countries of origin. Nevertheless, those migrants were sometimes only able to find low-level jobs as in the case of Sudanese who had left the Gulf countries for Canada, where they suffered ethnic and religious discrimination. He asked the Special Rapporteur for his views on how to deal with the situation of those skilled migrants. He was also concerned about the conditions prevailing in detention centres for irregular migrants, particularly in Canada, and asked if the Special Rapporteur had been able to visit those centres.

29. **Mr. Mamdoohei** (Islamic Republic of Iran) asked the Special Rapporteur to indicate what steps he had taken or planned to take in order to promote best practices that could improve the situation of migrant communities around the world. Bearing in mind the economic crisis currently affecting certain developed countries, he would also like to know what measures host countries might take to prevent the violation of migrants' human rights and the imposition of excessive restrictions on labour movements. What measures might be taken to fight against racism and discrimination in the context of the Durban Declaration and Programme of Action, as well as the outcome document of the Durban Review Conference? He would like to hear about the main difficulties the Special Rapporteur had encountered in his work and what types of collaboration had been offered by other special rapporteurs.

30. **Ms. Sabar** (United States of America) said that one fifth of the world's migrants lived in her country. The United States was aware of the benefits that migrants contributed to its economy, its culture and its social fabric and was determined to guarantee respect for the human rights of migrants, regardless of their migratory status.

31. Administrative detention, which was allowed under international human rights law, could in some cases be a useful tool for protecting national sovereignty. In 2009, the United States had undertaken an overall review of its migrant detention system. Some important changes had been made, including the revision of guidelines for granting parole to persons who had credible reasons to fear persecution and would be entitled to protection, the implementation of new risk-assessment tools and the improvement of conditions in detention centres, especially in regard to supervision and medical care.

32. Referring to the Special Rapporteur's recommendations on the sharing of best practices relating to irregular migration, she said that the United States would be interested in an exchange of views on how to change the public perception of migrants and gain acceptance of migration policies aimed at improving the protection of migrants' human rights. She would like to hear the Special Rapporteur's views on that issue.

33. **Mr. Huth** (European Union) said that all States members of the European Union had concerns regarding migration, an issue that was currently the subject of heated political debate. Migrants were too often victims of human trafficking. Considerable resources had been mobilized to fight against irregular migration, especially smuggling and trafficking in persons. The European Union was aware of the fact that it needed migrants in order to make up for deficiencies, in both economic and demographic terms. The European Union had laid the groundwork for a common policy on the subject in 1999; that policy had been confirmed in 2004 with the Hague Programme. Migration was thus a priority issue in its foreign relations.

34. Noting that the Special Rapporteur had mentioned the Council of Europe Convention on

Action against Trafficking in Human Beings, which was open to signature by non-member States, he asked how the Special Rapporteur envisaged the responsibilities of States of origin, transit States and States of destination in terms of ensuring that criminal networks would not continue to abuse the weakness of migrants. He would like to know what measures might be taken to enhance cooperation between countries of origin and countries of destination. He wondered what could be done to prevent certain migration policies, such as guaranteeing access to social benefits for irregular migrants, from causing an increase in irregular migration and how important it was to make a distinction between migrants who entered illegally by their own choice and those who were victims of human trafficking.

35. **Ms. Klein Solomon** (International Organization for Migration (IOM)) said that her organization was happy to be able to facilitate the Special Rapporteur's country visits. She agreed that immigration policies should be based on criminal law and border controls, but should also take into account the demand for labour in destination countries, the human rights of migrants and the interest of most States in facilitating regular migration for persons seeking jobs, education and training, or family reunification. The International Organization for Migration did not focus specifically on rights-based migration, but was concerned that migration should be properly managed, thus also guaranteeing respect for rights.

36. She agreed that those responsible for human trafficking should be punished and their victims protected. The generous aid provided by the United States had enabled IOM to set up a fund for victims of trafficking; she would appreciate any suggestions the Special Rapporteur might have on how better to publicize its existence. She would also like to hear his suggestions on how IOM might contribute to a compilation of best practices relating to the management of irregular migration. Lastly, how could IOM work with the Special Rapporteur to counter negative stereotypes of migrants and migration, bearing in mind regional consultations on the issue, which were being held on a regular basis but which should be even more frequent?

37. **Mr. Saadi** (Algeria) said that migrants were discriminated against in destination countries, which were applying increasingly restrictive measures. In that regard, he would like to know if the Special Rapporteur planned to go to destination countries and to visit detention centres in those countries, and if he planned to draw up guidelines and disseminate recommendations on respect for the cultures and traditions of migrants, as that was fundamental to the protection of their human rights.

38. **Mr. Bustamante** (Special Rapporteur on the human rights of migrants), replying to the question raised by the representative of Sudan, said that he had made an official visit to Canada; however, he always asked to visit detention centres on all his visits.

39. Replying to the representative of the Islamic Republic of Iran regarding the Durban Conference, he said that one of the main forms of discrimination he had encountered was child labour. That was especially serious in Latin America, including in his own country, Mexico.

40. A compilation of data on the demand for irregular immigrant labour could help change the public perception of the contribution of migrants to the production of wealth.

41. Replying to the representative of the United States of America, he said he recommended a publication by the Cardozo Institute of Law entitled *Constitution on ICE*, which dealt with the subject of violations of the human rights of migrants.

42. Replying to the representative of the European Union, he said that it was encouraging to note that there was recognition of the demand for irregular labour in the European Union. However, he was disappointed by the statement of the European Parliament on return migration, which might further criminalize irregular migration and had the potential to expose victims of human trafficking to double victimization, first by the traffickers and then by the justice system.

43. Replying to the question posed by the representative of IOM, he said that he would urge that organization to encourage the annual publication of data on endogenous demand for irregular labour, by sector of activity.

44. Finally, he assured the representative of Algeria that his report addressed the question of discrimination against migrants in an irregular situation. Publishing statistical data on demand for irregular labour would also help to clarify the issue.

45. **Ms. Rolnik** (Special Rapporteur on adequate housing as a component of the right to an adequate standard of living and on the right to non-discrimination in this context) explained that on her visits to the field, she had been struck by the extremely poor housing conditions in which migrants had to live.

46. Although there were no detailed statistics, it was estimated more than 200 million people in the world, nearly half of them women, were international migrants. In the past, most migration flows had been from low- or middle-income countries to high-income countries; currently, however, half of all migration was occurring between countries within the South. Globalization had brought about far-reaching changes, eliminating many obstacles to communications and trade, but a growing number of barriers had been put in place by States to halt the movement of migrants, especially the least skilled among them. Those policies had not effectively reduced the inflow of migrants; however, they had accentuated conflicts and xenophobia.

47. In an increasingly multicultural world, migrants were making an important contribution to the economic and social development of destination countries. Unfortunately, those countries tended to view migration as a security issue, and they had tightened the requirements for admission. Moreover, instead of implementing housing policies designed to facilitate assimilation, destination countries had allowed discrimination against migrants in access to housing, thus creating unhealthy living conditions that further aggravated segregation, tensions and xenophobia.

48. Most migrants did not enjoy the right to adequate housing that was guaranteed in international instruments such as the International Covenant on Economic, Social and Cultural Rights and the International Convention on the Elimination of All Forms of Racial Discrimination. That right was applicable to everyone regardless of migratory status. As many competent human rights bodies had stressed, migrants in an irregular situation should benefit from the same level of protection as those who had immigrated legally.

49. Migrants often found it very difficult to gain access to housing, both on the private market, because of xenophobia, their lack of a stable income or their lack of documentation, and in public housing. In the latter case, discriminatory measures were sometimes in effect that limited social benefits to individuals with permits for a long-term stay. It was often difficult to obtain information and counselling, and bureaucratic procedures made the whole application process cumbersome.

50. Migrants, especially those in an irregular situation, often had no choice but to pay exorbitant amounts of rent for unsuitable and unhealthy housing, or they had to live in unauthorized settlements that only reinforced their exclusion within the urban environment. Workers living in employer-provided housing were subjected to conditions that violated their human rights and were tantamount to enslavement. She had seen migrant workers housed in poorly ventilated metal containers with no electricity or water, and immigrant domestic workers, mainly women, sleeping on the floor in their employers' house. Those domestic workers were also especially vulnerable to domestic violence and sexual harassment and were sometimes kept locked up, and they rarely had any possibility of appeal.

51. Migrants were often caught in a vicious circle: being unable to obtain a permit to stay, they had to live in informal settlements from which they were eventually expelled, only to find themselves homeless once again. Countries that adopted anti-immigrant policies such as restricted access to social housing, penalties against landlords who accepted irregular migrants or prohibition to buy private housing, were violating migrants' right to adequate housing. Restrictions on the granting of residence permits had the most serious repercussions because the lack of documentation was often the main obstacle preventing them from having access to private housing or public programmes. Moreover, the lack of legislation forbidding forced labour, trafficking or degrading treatment represented a serious breach by States of their obligation to protect persons living in their territory.

52. In many cities, the integration of migrants into the fabric of urban life had had a positive effect, both for the migrants and for the economic and social development of the host community. In that regard, she mentioned a number of good practices that were designed to guarantee equal access to housing and to social services for migrants and to include them in the urban planning process.

53. While it was true that the status of migrants was a very sensitive issue that had created resentment and tensions, States had a responsibility to combat those

trends and to promote integration. Mobility was increasing, and rather than opposing the phenomenon, States should capitalize on the potential for innovation and creativity that was available in societies with a diversity of cultures, religions and ethnic groups.

54. **Mr. Huth** (European Union), said that he wondered whether the framework developed by the Special Representative on the Issue of Human Rights and transnational corporations and other business enterprises might be useful in drawing up guidelines for private enterprises in the housing sector. Considering the difficulties facing some countries, he would also like to know if there might be some examples of good practices for effective monitoring of the housing situation and accurately determining the actual number of migrants who were homeless. Finally, he asked if the Special Rapporteur could give some examples of policies that had effectively put an end to discriminatory measures by public or private entities.

55. **Ms. Rolnik** (Special Rapporteur on adequate housing as a component of the right to an adequate standard of living and on the right to non-discrimination in this context) said that her report mentioned several housing-related initiatives that had been taken at the local level to fight stereotyping and promote integration. In urban settings, the territorial situation of a community had a direct influence on its identity and its role, as well as on how well it was respected. Segregation was in fact a two-way process: migrants tended to live near each other, creating a ghetto phenomenon, and if a particular community was left on its own, stereotypes and discrimination were reinforced. To promote appropriate housing policies, it was therefore important that the community concerned should be on an equal footing with the rest of the city. The issue of homelessness was an especially sensitive one, given the current economic crisis, and migrants were not the only people affected. However, migrants were especially vulnerable; some countries, such as the Netherlands and Belgium, had tried to solve the problem through measures such as providing temporary housing for migrants who agreed to return to their countries. Although private businesses carried out many discriminatory practices, States should exercise oversight and ensure observance of minimum standards of human rights.

56. **The Chair** said that, in the absence of Mr. Šimonović (Assistant Secretary-General for Human Rights), Ms. Nicholson (Deputy Director of the New York Office of the United Nations High Commissioner for Human Rights) would read the statement by the late Arjun Sengupta, Chairperson-Rapporteur of the Working Group on the Right to Development.

57. **Ms. Nicholson** (Deputy Director of the New York Office of the United Nations High Commissioner for Human Rights) began by paying tribute to the memory of Arjun Sengupta. Introducing the report of the Working Group on its eleventh session (A/65/87), she drew attention to the observations and conclusions of the high-level task force that had been considered by the Working Group. Although Millennium Development Goal 8 referred to the development of a global partnership for development, none of the global partnerships put in place by multilateral institutions had been established as a direct result of Goal 8, nor had they even been designed to promote the right to development. Given that the realization of the right to development required the establishment of an appropriate environment, States had a responsibility to create such an environment by adopting national and international measures that could then be evaluated in the light of the criteria and sub-criteria developed by the task force.

58. The Working Group had considered that further work should be undertaken at the intergovernmental level and had invited Member States and other stakeholders to share their views on the work of the task force and on the way forward.

59. **The Chair** paid tribute to the memory of Arjun Sengupta.

60. **Ms. Hu** Miao (China) expressed her condolences at the passing of Arjun Sengupta. The criteria and sub-criteria would definitely enrich the content of the right to development and contribute to its realization. However, they should also refer to the importance of synergies and international solidarity; the responsibility of the international community to create a favourable environment; efforts to remove structural obstacles in the economic, financial and political spheres; and the need to promote respect for agreements on development aid to be provided by the developed countries. She hoped that in future, the Human Rights Council would increase its focus on the right to development. China would continue to support the activities of the Working Group. She would like to know what its programme of work would be for the next phase.

61. **Ms. Nicholson** (Deputy Director of the New York Office of the United Nations High Commissioner for Human Rights) said that the programme of work would be published as soon as it had been completed.

The meeting rose at 12.20 p.m.